

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTIETH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 448 of 2005

Between:

C. Naganna, W/o. C. Thippanna,
Resident of Sankapuram Village, Ieeza Mandal, Mahaboobnagar District.

..... PETITIONER

AND

- 1 The Joint Collector, Mahaboobnagar.
- 2 The Revenue Divisional Officer, Gadwal, Mahaboobnagar District.
- 3 The Mandal Revenue Officer, Ieeza Mandal, Mahaboobnagar District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ of mandamus or any other appropriate writ or direction declaring the order of the 1st respondent passed in Case No. CS1/1099/2004 dated 18-12-2004 confirming the order of the 2nd respondent passed in G/1901/2004 dated 25-10-2004 as illegal, arbitrary and in violation of principles of natural justice.

Counsel for the Petitioner:MR.O.MANOHER REDDY

Counsel for the Respondents No.1 to 3: GP FOR CIVIL SUPPLIES

The Court at the stage of admission made the following ORDER:

Petitioner was appointed as a fair price shop dealer of Sankapuram village, leeza mandal, Mahabubnagar district. Through proceedings dated 25.10.2004, the second respondent suspended his authorization on the basis of a report dated 03.10.2004 said to have been submitted by the third respondent. Aggrieved thereby, the petitioner preferred an appeal before the first respondent. The appeal was rejected by the first respondent through his order dated 18.12.2004. Hence, this writ petition.

Sri O. Manohar Reddy, learned counsel for the petitioner, submits that the second respondent did not issue any show cause notice before he suspended the authorization of the petitioner. He contends that the suspension was not pending enquiry and she recorded findings to the effect that the petitioner had committed irregularities. According to the learned counsel, the order passed by the first respondent discloses a clear case of non-application of mind, in that, he took the view that the contention of the petitioner that the order of suspension was not preceded by any show cause notice is not correct. Drawing the attention of this court to the observation made by the first respondent in his order, learned counsel submits that the same deserves to be

set aside and that the petitioner be extended the relief.

Learned Government Pleader for Civil Supplies, on the other hand, submits that though it is not stated in the order of suspension that it is pending enquiry, the fact that it was followed by a show cause notice on the same day discloses that the measure is pending enquiry. It is contended that the observations made in the order of suspension as to the irregularities are tentative in nature and the final decision would be taken only on consideration of the case. An attempt is made to sustain the order of the first respondent.

The second respondent being the appointing authority under the A.P. State Public Distribution System Control Order, 2001 (for short 'Control Order') is vested with the power to cancel or suspend the authorizations of the fair price shop dealers. Suspension can be resorted to either as a measure of substantive penalty or the one pending enquiry. Wherever it is imposed as substantive penalty, it has to be preceded by a notice and enquiry under clause 5(4) of the Control Order. Suspension can be ordered without notice if only it is directed as pending enquiry.

In the order dated 25.10.2004, the second respondent ordered as under:

“It is therefore ordered to suspend the authorization of Sri Naganna, Fair price shop dealer, Sankapur village of leeza mandal with immediate effect.”

He issued a show cause notice on the same day calling for explanation from the petitioner. Despite the same, he made the following observation in the order of suspension:

“Thus it is evident that the dealer committed irregularities and violated the conditions of authorization in functions of F.P. Shop, Sankapur village.”

This discloses that the second respondent had already arrived at a conclusion

and for all practical purposes the show cause notice issued by him is an empty formality.

The specific grievance of the petitioner was that he did not commit any irregularities and he was not given an opportunity to explain as to the allegations against him. The first respondent dealt with this contention and observed as under:

“It is incorrect to say that no opportunity was given to the dealer as pleaded in the grounds of appeal. Show cause notice was issued with five charges framed and the dealer also offered his explanation and the matter is pending final decision before the Revenue Divisional Officer, Gadwal. At this stage, I do not deem it proper to set aside the interim order of the Revenue Divisional Officer, Gadwal. Therefore, the appeal is rejected.”

It is rather unfortunate that an officer in the rank of I.A.S. did not understand the basic facts of the case and the grievance of the petitioner in the appeal. The subject matter of the appeal before him is the order of suspension. The show cause notice referred to in his order is the one issued subsequent thereto directing the petitioner to explain as to why the authorization shall not be cancelled. By no stretch of imagination, such a show cause notice can be said to be the one providing an opportunity to the petitioner before an order of suspension was passed against him. This Court takes exception to the manner in which the second respondent passed the order of suspension, recording definite findings against the petitioner, without any verification from her and the manner in which the first respondent had dealt with the specific contentions.

For the foregoing reasons, the writ petition is allowed and the order of suspension dated 25.10.2004 passed by the second respondent is set aside. There shall be no order as to costs.

20.01.2005

Note:

Issue CC by 24.01.2005.

(BO)

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To

- 1 The Joint Collector, Mahaboobnagar.
- 2 The Revenue Divisional Officer, Gadwal, Mahaboobnagar District.
- 3 The Mandal Revenue Officer, Ieeza Mandal, Mahaboobnagar District.

4 Two CCs. to the G.P. for Civil Supplies, High Court of A.P.,

Hyderabad (OUT)

5 Two CD copies.